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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.651 of 2001**

Balchand and another

- Versus -

State of Chhattisgarh

AND OTHER ELEVEN CONNECTED APPEALS

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**JUDGMENT FOR CONSIDERATION**

Sd/-
JUDGE
9.5.2007

9. agree. —

**HON'BLE MR. JUSTICE SUNIL KUMAR SINHA**

Sd/-
Sunil Kumar Sinha
Judge

**POST FOR JUDGMENT ON 11 MAY, 2007**

Sd/-
L.C. Bhadoo
Judge

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## HIGH COURT OF CHHATTISGARH, BILASPUR

### Criminal Appeal No.651 of 2001

APPELLANTS:
(In custody)

1. Baichand, S/o Kanhaiya Singh, Aged 70 years, resident of Village Bhaismudi, P.S. Janjgir, District Janjgir-Champa (Chh.G.)
2. Devilal, S/o Virsai, aged 71 years, R/o village Bhaismudi, P.S. Janjgir, Dist. Janjgir-Champa.

- Versus -

RESPONDENT:

State of Chhattisgarh, Through: P.S. Janjgir, Distt. Janjgir-Champa.

### Criminal Appeal No.762 of 2001

APPELLANT:
(In jail)

Kumar Singh, S/o Bajrang Singh Thakur, Aged about 34 years, resident of Village Bhaismundi, P.S. Janjgir, District Janjgir-Champa (Chhattisgarh)

- Versus -

RESPONDENT:

State of Chhattisgarh, Through: P.S. Janjgir, Distt. Janjgir (Chhattisgarh)

### Criminal Appeal No.785 of 2001

APPELLANTS/:
(Accused)

1. Santosh Singh, S/o Rameshwar Singh, aged 34 years
2. Rameshwar Singh, S/o Kushal Singh, aged 75 years.
3. Nande Singh, S/o Rameshwar Singh, aged about 30 years.
4. Nand Kumar S/o Rameshwar Singh, aged about 30 years.

All residents of Village Bhaismundi, P.S. Janjgir, Chhattisgarh.

- Versus -

RESPONDENT:

State of Chhattisgarh, Through: District Magistrate, Janjgir

### Criminal Appeal No.821 of 2001

APPELLANT:

Rohit, S/o Harish Chand, aged about 25 years, resident of village Bhains Mudi, Police Station Janjhgir, district. Janjhgir Champa, Chhattisgarh.

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- Versus -

RESPONDENT: State of Chhattisgarh, Through District Magistrate, Janjgir

**Criminal Appeal No.823 of 2001**

APPELLANT: (In Jail) Gopal Das, S/o Shri Lal Das, aged about 26 years, resident of village Bhaismudi, P.S. Janjgir, District Janjgir-Champa (C.G.)

- Versus -

RESPONDENT: State of Chhattisgarh, Through: P.S. Janjgir, Distt. Janjgir-Champa (C.G.)

**Criminal Appeal No.846 of 2001**

APPELLANTS/: (In Jail)

1. Baran, S/o Narayan Kurmi, Aged about 40 years.
2. Chhatram S/o Shri Ram Kashyap, Aged about 35 years.

Both are residents of Village Bhaisgudi, Police Station – Janjgir, District – Janjgir.

- Versus -

RESPONDENT: State of Chhattisgarh, Through Station House Officer, Police Station, Janjgir

**Criminal Appeal No.852 of 2001**

APPELLANT/: (Accused) (In Jail) Raj Kumar, S/o Bajrang Singh, aged 55 years, resident of Bhesmudi, Police Station Janjgir, District Janjgir Champa

- Versus -

RESPONDENT: The State of Chhattisgarh, Through the District Magistrate, Janjgir (Sessions Division Bilaspur)

**Criminal Appeal No.853 of 2001**

APPELLANTS/: (Accused) (In Custody)

1. Nirmal Kashyap, aged 45 years, son of Tirith Ram Kashyap.
2. Jaipal Kurmi, aged 40 years, son of Baijnath Kurmi.
3. Resham Lal Kurmi, aged 35 years, son of Luru Kurmi.

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All residents of village – Bhaismudi, Police Station – Janjgir, District – Janjgir-Champa (Chhattisgarh)

- Versus -

RESPONDENT: (Prosecution)

State of Chhattisgarh, Through Police Station, Janjgir District – Janjgir-Champa

**Criminal Appeal No.866 of 2001**

APPELLANT: (Accused)

Guharam, S/o Bhukhan Kurmi, aged 40 years, resident of village – Bhaismudi, Police Station – Janjgir, District Janjgir (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh, Through the Superintendent, Central Jail, Bilaspur (C.G.)

**Criminal Appeal No.875 of 2001**

APPELLANTS: (Accused)

1. Dhananjay, S/o Baijnath Kashyap, aged 30 years.

2. Amritlal, S/o Konda Sahu, aged about 40 years.

Both residents of village – Bhaismudi, Police Station – Janjgir, District Janjgir (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh, Through the Superintendent, Central Jail, Bilaspur (C.G.)

**Criminal Appeal No.970 of 2001**

APPELLANT: (In Jail)

Basant Das, S/o Shri Lal Das, aged 26 years, resident of Village Bhaismudi, P.S. Janjgir, District Janjgir-Champa (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh, Through P.S. Janjgir, Distt. Janjgir-Champa (C.G.)

AND

**Criminal Appeal No.755 of 2002**

APPELLANT/: (Accused No.20) (In Jail)

Surjan, S/o Saraharam, Aged about 35 years, R/o Village Bhaismudi, District Janjgir-Champa (C.G.)

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- Versus -

RESPONDENT: State of Chhattisgarh,
Through S.H.O. P.S. Janjgir,
Distt. Janjgir-Champa (C.G.)

(Appeals under Section 374 (2) of the Cr.P.C.)

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Present:

Mr. N.L. Soni, counsel for the appellants in Cr.A.No.651/2001

Mr. Somnath Verma, counsel for the appellants in Cr.A.Nos.762/2001 & 853/2001.

Mr. Prafull Bharat, counsel for the appellants in Cr.A.No.785/2001.

Mr. Vimlesh Bajpai, counsel for the appellant in Cr.A.No.821/2001.

Mr. S.L. Bajaj, counsel for the appellants in Cr.A.Nos.823/2001 & 875/2001.

Miss Sharmila Singhai, counsel for the appellants in Cr.A.Nos.846/01 & 755/02.

Mr. Prabhakar Singh Chandel, counsel for the appellant in Cr.A.No.852/2001.

Mr. Anant Bajpai, counsel for the appellant in Cr.A.No.866/2001.

Dr. Shailesh Ahuja, counsel for the appellant in Cr.A.No.970/2001.

Mr. G.K. Beriwal, Deputy Advocate General with Mr. U.N.S. Deo & Mr. D.K. Gwalre, Additional Public Prosecutors for the State/respondent.

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**Division Bench:** **Hon'ble Mr. L.C. Bhadoo and**
**Hon'ble Mr. Sunil Kumar Sinha, JJ.**

**JUDGMENT**

(Delivered on 11th May, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J.***

1. Cr.A.No.651/2001 filed by Balchand & Devilal, Cr.A.No.762/2001 filed by Kumar Singh, Cr.A.No.785/2001 filed by Santosh Singh, Nande Singh, Rameshwar & Nand Kumar, Cr.A.No.821/2001 filed by Rohit, Cr.A. No.823/2001 filed by Gopaldas, Cr.A.No.846/2001 filed by Baran Kurmi & Chhatram, Cr.A.No.852/2001 filed by Raj Kumar, Cr.A.No.853/2001 filed by Nirmal Kashyap, Jaipal & Reshamlal, Cr.A.No.866/2001 filed by Guharam, Cr. A.No.875/2001 filed by Dhananjay & Amritlal, Cr.A.No.970/2001 filed by Basant Das and Cr.A.No.755/2002 filed by Surjan are being disposed of by this common judgment, as all these appeals are arising out of the same judgment dated 12-7-2001 passed by the Additional Sessions Judge, Janjgir in Sessions Trial No.342/95.

2. The accused/appellants along with eight other accused persons were tried by the Additional Sessions Judge, Janjgir in Sessions Trial No.342/95 for

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committing three ghastly murders of Jawahar Singh and his two sons namely, Bhupendra Singh & Shailendra Singh.

3. By these appeals under Section 374 (2) of the Cr.P.C., the accused/appellants have questioned legality and correctness of the judgment of conviction and order of sentence dated 12th July, 2001 passed by the Additional Sessions Judge, Janjgir in S.T.No.342/95, whereby learned Additional Sessions Judge after convicting each of the accused/appellant for commission of offence under Section 302 read with Section 149 of the I.P.C. for committing the murders of Jawahar Singh, Bhupendra Singh & Shailendra Singh, sentenced each of them to undergo imprisonment for whole life and pay a fine of Rs.200/-. The accused/appellants have also been convicted under Section 148 of the I.P.C., but no separate sentence has been imposed upon them under this Section.

4. Case of the prosecution, in brief, is that there were two groups in Village: Bhaismudi, one group was consisting of deceased Jawahar Singh, Bhupendra Singh & others, whereas the other group was of the accused/appellants & others. There was dispute between two groups on account of Panchayat elections and other reasons.

5. Further case of the prosecution is that in the intervening night of 16th & 17th January, 1995, the accused persons convened a meeting and hatched up a conspiracy to eliminate Jawahar Singh & others. On 17-1-1995 the accused persons formed an unlawful assembly with a common object to murder Viki Singh, Jawahar Singh, Bhupendra Singh, Shailendra Singh & Kalicharan and in furtherance of the said common object, all of them having deadly weapons committed riot and the murder of Viki Singh near Nawa Talab, thereafter, they proceeded towards the agricultural field of Jawahar Singh where they committed the murder of Jawahar Singh and his two sons namely, Bhupendra Singh & Shailendra Singh, from there they proceeded to Holha Chowk of Bhaismudi and committed the murder of Kalicharan by attacking with Lathis & Tabbals. For all these three acts, the accused persons faced three separate trials viz., Sessions Trial No.340/95 for commission of the murder of Viki Singh, Sessions Trial No.342/95 for commission of murders of Jawahar Singh, Bhupendra Singh & Shailendra Singh and Sessions Trial No.341/95 for commission of the murder of Kalicharan.

6. Madhubala Bai gave Dehati Nalishi Ex.P-1 at the spot on 17-1-1995 at 3 p.m. to the effect that she is resident of Village Bhaismudi, at about 11.30 a.m. she was at her shop, at that time, Karia Sabaria came crying to her shop and said that Viki Singh has been murdered near Nawa Talab by Shiv Sena persons

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namely, Kumar Singh, Nande Singh, Guharam, Rohit, Jaipal, Resham, Rajkumar Singh, Prahlad Singh, Rameshwar Singh, Dhananjay, Nand Kumar, Santosh & others. When she reached the spot, she saw that all these persons were carrying Lathi, rod, battle axe etc. They were crying and saying, 'let us now go to the field of Jawahar Singh and finish them there', they started going towards the agricultural field of her father. She and her mother also followed them and requested that once they should save their life, but they did not accede their request. While going to the agricultural field, she informed Vinay Singh that Babuji has been murdered near Nawa Talab, Nirmal Kashyap, Amrit, Basant & Baran were also along with them. After reaching the agricultural field, these persons attacked her father Jawahar Singh and brothers Bhupendra Singh & Shailendra Singh with Lathi & Tabbal as a result of which her father Jawahar Singh & brother Bhupendra Singh succumbed to the injuries sustained by them instantaneously, and brother Shailendra Singh succumbed to the injuries after 15-20 minutes. All these persons have committed the murder of her father and brothers.

7. Receiving this report, Head Constable Brajender Singh (PW-16), Police Station: Janjgir registered the F.I.R. Ex.P-64 for commission of offence under Sections 147, 148 & 302 read with Section 149 of the I.P.C. Merg intimation Ex.P-65 was given by Brajender Singh (PW-16) Head Constable in respect of the death of Shailendra Singh, whereas merg intimations Exs.P-70 & P-71 in respect of the death of Bhupendra Singh & Jawahar Singh were given by M.L. Shandilya (PW-22), Inspector of Police. After registration of crime, the Investigating Officer commenced investigation and after giving notice Ex.P-2 to the Panchas, he prepared inquest Ex.P-3 on the body of Bhupnedra Singh. After giving notice Ex.P-51, inquest Ex.P-52 was prepared on the body of Shailendra Singh. After giving notice Ex.P-63, inquest Ex.P-64 was prepared on the body of Jawahar Singh. Body of Bhupendra Singh was sent for post-mortem examination to Primary Health Centre, Janjgir under Ex.P-55 where Dr. P.K. Narula (PW-12) conducted post-mortem on the body of Bhupendra Singh and prepared post-mortem report Ex.P-56. He opined that cause of death of Bhupendra Singh was due to shock as a result of haemorrhage on account of extensive homicidal head injury. Body of Jawahar Singh was also sent for post-mortem examination to Primary Health Centre, Janjgir under Ex.P-58 where Dr. U.C. Sharma (PW-13) conducted post-mortem on the body of Jawahar Singh and prepared post-mortem report Ex.P-59. He opined that cause of death of Jawahar Singh was due to shock and haemorrhage as a result of extensive head injury and the death is homicidal. Body of Shailendra

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Singh was sent for post-mortem examination under Ex.P-60 to Primary Health Centre, Janjgir where Dr. A.K. Paliwal (PW-14) conducted post-mortem and prepared post-mortem report Ex.P-61. He opined that cause of death was due to shock resulting from haemorrhage caused by extensive head injury and the death was homicidal in nature.

8. After completion of investigation, charge sheet was filed against 20 accused/ appellants along with other 8 acquitted persons and one Prahlad Singh in the Court of Judicial Magistrate, First Class, Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial. However, Prahlad Singh died during trial.

9. The prosecution examined 22 witnesses at the trial. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which each of the accused denied the material appearing against each of them in the prosecution evidence. They stated that they are innocent and have been falsely implicated in the crime. Accused Ganesh Prasad stated that the deceased persons and their party persons were involved in selling of illicit liquor and therefore, they were having grudge against their group because they belong to Shiv Sena and they were not allowing any illegal activities in the village. During the Panchayat elections, the candidate of deceased party lost elections, therefore, they are having animosity against them. Accused Gopal Das stated that on 17-1-1995 he was not at village Bhaismudi, as he went to Raigarh, he was at Raigarh from 8.30 a.m. to 5 p.m. and on that day he under went medical test. The accused persons examined Lalit Kumar (DW-1) & Dinesh Chandra Pathak (DW-2) in their defence.

10. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused/appellants as aforementioned and acquitted accused Ganesh Prasad, Sanat Sahu, Anand Ram, Murari Singh, Sadanand, Bhagat, Janak & Nanki Babu.

11. We have heard learned counsel for the accused/appellants Mr. S.L. Bajaj, Mr. N.L. Soni, Mr. Somnath Verma, Mr. Prafull Bharat, Mr. Vimlesh Bajpai, Miss Sharmila Singhai, Mr. Anant Bajpai & Dr. Shailesh Ahuja, as also Mr. G.K. Beriwal, learned Deputy Advocate General with Mr. U.N.S. Deo & Mr. D.K. Gwalre, learned Additional Public Prosecutors on behalf of the State/ respondent, perused the record and judgment of the trial Court.

12. Learned counsel for the appellants have not disputed the homicidal death of Jawahar Singh, Shailendra Singh & Bhupendra Singh. Moreover, Dr. U.C.

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Sharma (PW-13) who conducted post-mortem on the body of Jawahar Singh has stated that there were 4 incised wounds on various parts of head of Jawahar Singh viz., fracture in skull bone, brain material was coming out, clotted blood on neck and face, crack fracture in the midline of skull & parietal bones. On dissection of brain it was found that there was haemorrhage. He has stated that after conducting post-mortem, he reached to the conclusion that the death of Jawahar Singh was homicidal.

13. Dr. P.K. Narula (PW-12) has stated that on 18-1-1995 he conducted post-mortem on the body of Bhupendra Singh, there were 7 incised wounds and three contusions on various parts of head & face. He has further stated that there was fracture in skull bone and parietal bone. On examination of skull, it was found that there was sludge of subcutaneous haemotoma below the skull bone, there was fracture on the right side of frontal bone extending up to occipital bone, skull turned into many pieces, there was huge extradural haemotoma and the injuries were sufficient in the ordinary course of natural to cause death. The death of Bhupendra Singh was as a result of shock and excessive haemorrhage and homicidal in nature.

14. Dr. A.K. Paliwal (PW-14) has stated that on 18-1-1995 he conducted post-mortem on the body of Shailendra Singh and there were incised wounds on skull, parietal and occipital regions, both the parietal bones were fractured into pieces, there was subcutaneous haemotoma all over the skull, extensive extra dural haemotoma was also there and there was intra cerebral haemorrhage of brain. The cause of death was head injury and the injury was ante-mortem in nature. The death was homicidal in nature and the injuries were sufficient in the ordinary course of nature to cause death.

15. Therefore, from the above medical evidence, as also the ocular evidence of Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3), who witnessed the assault made by the accused persons, it is established that the deaths of Jawahar Singh, Shailendra Singh & Bhupendra Singh were homicidal in nature.

16. As regards involvement of the accused/appellants in commission of murders of Jawahar Singh, Shailendra Singh & Bhupendra Singh, Section 149 of the I.P.C. provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every persons who, at the time of the committing of that offence, is

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a member of the same assembly, is guilty of that offence. Section 141 requires a minimum of five persons for being designated as an 'unlawful assembly'.

17. The law on the point is that mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident.

18. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 I.P.C. may be different on different members of the same assembly.

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19. In the matter of **Sabbi Mallesu and others vs. State of A.P.** reported in **(2006) 10 SCC 543** the Apex Court held that where a large number of people allegedly took part in commission of offence, possibility of some bystanders being falsely implicated cannot be ruled out. It was further held that on facts and circumstances of the case allegations that the accused persons on account of land dispute beat deceased persons indiscriminately resulting into their death – No specific overt act was attributed to co-accused persons – Nor there was any common object on the part of all accused so as to make themselves liable for conviction.

20. In order to establish charge against the accused persons, the prosecution has examined four eyewitnesses i.e. Smt. Madhubala Devi (PW-1), Saraswati Bai (PW-3), Vinay Kumar Singh (PW-10) & Narayan Yadav (PW-11). As far as Narayan Yadav (PW-11) is concerned, he has turned hostile. Even the prosecution witnesses have stated that when the accused persons entered the field of Jawahar Singh, this person (Narayan Yadav) ran away. Therefore, only the evidence of three witnesses remained to be scrutinized.

21. Smt. Madhubala Devi (PW-1) has stated in her evidence that at about 11-11.30 during the day when she was at her shop, Karia Sabaria came crying saying that Viki Singh has been murdered near Nawa Talab. She went towards Nawa Talab and saw that Viki Singh was murdered where Nande, Kumar Singh, Jaipal, Amrit, Basant, Baran, Guha, Resham, Nand Kumar, Santosh, Raj Kumar, Rameshwar, Ganesh Chaubey, Nirmal, Sanat, Nanki Babu, Thandu Das, Chhatram, Dhananjay, Rohit Karsh, Gopal Das, Devilal, Surjan, Bhagwat, Balchand & Melabai were there. Nande & Melabai said 'whatever has happened, happened Viki Singh has been murdered let us go and finish his nephews Shailendra Singh & Bhupendra Singh and brother Jawahar Singh, otherwise they will not save you', on which these persons started going towards the agricultural field where her brothers Bhupendra Singh, Shailendra Singh & father Jawahar Singh were working along with Narayan Yadav. The accused persons were carrying Lathi, battle axe, sword and rod, they were saying that they will finish Jawahar Singh and his two sons. She along with her mother was following them and were requesting them with folded hands to once save their lives on which Nande picked up Lathi in order to assault her, but even then she continued to make request. After reaching the field, Nande attacked her father with Lathi as a result of which her father sustained injury on his head, brain started coming out and blood started oozing out of the injury. Thereafter, Jaipal & Amrit attacked his father on head with battle axe and Resham, Baran, Kumar, Guha, Jaipal, Nand Kumar, Basant Das and all other

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accused persons whose names have been mentioned earlier attacked her father and brother Shailendra Singh. Jaipal attacked her brother Shailendra with Lathi and other accused persons also attacked her brother with Lathi & Tabbal. Few people were attacking her father and few people were attacking her brother Shailendra. When her mother said to her brother Bhupendra that he will be saved, her brother Bhupendra started running, on which Kumar shouted that Bhupendra is running, catch him whereupon Surjan came and attacked her brother with Rampa on his head. Thereafter, Nande, Kumar, Basant, Baran, Amrit, Guha, Jaipal, Resham and other accused persons attacked Bhupendra. Basant attacked her father with Lathi.

22. Saraswati Bai (PW-3) has corroborated the above evidence and stated that Nande, Kumar, Baran, Basant, Raj Kumar, Santosh Kumar, Nand Kumar, Amrit, Guha, Resham, Gopal Das, Rameshwar Singh, Devilal, Balchand and all other accused persons were at the scene. Nande was carrying Lathi, Kumar was carrying Tabbal, Amrit was carrying battle axe, Basant was carrying rod, Janak was carrying Kharda and the remaining accused persons were carrying Lathi, they were attacking Viki Singh. Thereafter, they left for the agricultural field of her husband saying that they will murder Jawahar Singh and his two sons namely, Bhupendra Singh & Shailendra Singh. She requested the accused persons with folded hands to save their lives, but they did not pay any heed to her prayer and the whole group said that they will murder Jawahar Singh and his two sons. She along with her daughter was following them, they reached to the place where husband and two sons were working in the field of Bandhai Khar and they murdered her husband and two sons by attacking them with deadly weapons. When Bhupendra Singh was running away, Surjan attacked him with Rampa. Nande, Baran, Kumar, Resham, Guha, Amrit, Jaipal, Basant and all other accused persons attacked her husband & two sons and committed their murder.

23. Vinay Kumar Singh (PW-10) has also corroborated the evidence of Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3).

24. Learned counsel appearing for the accused/appellants argued that as far as the evidence of Vinay Kumar Singh (PW-10) is concerned, his presence at the scene of occurrence was doubtful, he is a created witness. They also argued that the accused persons have been falsely implicated on account of animosity. They further argued that names of accused persons namely, Chhatram, Gopal Das, Balchand, Devilal & Surjan have not been mentioned in the F.I.R. Moreover, in the Court evidence as well as in the statement recorded under

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Section 161 of the Cr.P.C., no overt act has been attributed in respect of Devilal, Balchand, Chhatram, Gopal Das, Santosh Singh, Nirmal, Rohit, Dhananjay, Rameshwar & Raj Kumar Singh. They also argued that in the statements of the witnesses recorded under 161 of the Cr.P.C., no specific overt act of each of the accused has been attributed and therefore, there is improvement in their Court evidence regarding the overt acts played by the accused persons. They further submitted that no independent witness has been examined. All the three eye witnesses namely, Smt. Madhubala Devi (PW-1), Saraswati Bai (PW-3) & Vinay Kumar Singh (PW-10) are close relatives of the deceased persons viz., wife, daughter and nephew, therefore, they are highly interested witnesses and without any evidence of independent witness no reliance can be placed on their testimony. No independent witness of the vicinity or from the adjoining field has been examined.

25. As far as the question of placing reliance on the evidence of relative witness is concerned, settled law on the point is that evidence of a relative witness cannot be rejected out rightly, however, the Court is required to scrutinize the evidence of a relative witness with great care and circumspection.

26. In the matter of **Namdeo v. State of Maharashtra** reported in **2007 AIR SCW 1835**, the Apex Court has held that a close relative cannot be characterized as an 'interested' witness, he is a 'natural' witness, his evidence however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent person.

27. In the matter of **Dalbir Kaur (Mst.) v. State of Punjab** reported in **(1976) 4 SCC 158**, the Apex Court held that the accused killed his own father and real brother over a property dispute. Eyewitnesses to the 'gruesome, brutal and unprovoked' double-murder were near relatives of the deceased. It was, therefore, contended that they were 'interested' witnesses and their evidence should not be accepted for holding the appellants guilty. Negativing the contention and upholding the order of conviction, the Court stated that

> "There can be no doubt that having regard to the fact that the incident took place at mid night inside the house of Ajaib Singh, the only natural witnesses who could be present to see that assault would be Jaswant Kaur and her mother Shiv Kaur. No outsider can be expected to have come at that time because the attack by the appellants was sudden.

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> Moreover, a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is some how or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here."

28. In the matter of **Harbans Kaur v. State of Haryana** reported in **(2005) 9 SCC 195**, the conviction of the accused was challenged before the Apex Court, inter alia on the ground that the prosecution version was based on testimony of relatives and hence it did not inspire confidence. Negativing the contention the Apex Court said:

> "There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused."

29. As far as the argument of learned counsel for the appellants that the complainant party was on inimical relations with the accused party, therefore, they have been falsely implicated, inimical relations on account of Panchayat elections and other reasons between the two parties are not in dispute. Again, law on the point is that in such cases, the Court is required to scrutinize the evidence of prosecution witnesses with more care and circumspection because animosity, in fact, is a double edged weapon which can be **a basis for** commission of crime as also for false implication or over implication.

30. As far as omissions, contradictions and improvements between the first information report as well as police dairy statements recorded under Section 161 of the Cr.P.C. and the Court evidence is concerned, in the matter of **Munshi Prasad and others vs. State of Bihar** reported in **(2002) 1 SCC 351**, the Apex Court held that

> "While appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to rejected evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of."

31. In the matters of **State of U.P. v. M.K. Anthony** reported in **(1985) 1 SCC 505** and **Leela Ram v. State of Haryana** reported in **(1999) 9 SCC 525**, the Apex Court held that

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"Needless to record that difference in some minor detail, which does not otherwise affect the core of the prosecution case, may be there but that by itself would not prompt the court to reject the evidence on minor variations and discrepancies."

32. In **Leela Ram** (supra) the Apex Court observed in para 10 that

"10. * * *

'24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

The Apex Court further observed:

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

"*155. Impeaching credit of witness.*—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

(1)-(2) * * *

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under

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Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. reported in AIR 1959 SC 1012).""

33. Now, coming to the evidence of Vinay Kumar Singh (PW-10), after perusal of the evidence of Smt. Madhubala Devi (PW-1), Saraswati Bai (PW-3) & Vinay Kumar Singh (PW-10), the argument advanced by learned counsel for the appellants appears to have force for the reason that it is admitted position that as per the evidence of the prosecution witnesses, at the time of incident Vinay Kumar Singh was working in his agricultural field, whereas, Jawahar Singh, Bhupendra Singh & Shailendra Singh were working in their agricultural field and the father of Vinay Kumar Singh namely, Ramanuj alias Viki Singh was murdered near Nawa Talab adjacent to Village: Bhaismudi. Smt. Madhubala Devi (PW-1) in para 13 of her cross-examination has stated that the agricultural field of Vinay Singh is at a distance of less than ½ km. from the agricultural field of her father i.e. Bahra Doli. As per the evidence of Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3), when they came to know about the incident regarding the murder of Viki Singh they immediately came from their house to the spot where the accused persons were saying that they have already murdered Viki Singh, now let us go to the agricultural field of Jawahar Singh to commit the murder of Jawahar Singh and his two sons. The accused persons started towards that side, then both these ladies requested them with folded hands to once save the lives of Jawahar Singh, Bhupendra Singh & Shailendra Singh, but they did not pay any heed to their request. As per the evidence of these two witnesses, when they were following the accused persons and on the way when they were passing near the agricultural field of Vinay Singh, they shouted and informed Vinay Singh about the commission of murder of his father, however, they continued to follow the accused persons.

34. Whereas, Vinay Kumar Singh (PW-10) has stated in para 1 of his evidence that when Madhubala Devi (PW-1) & Saraswati Bai (PW-3) came towards the agricultural field of 'Khar' they informed him about the murder of his father near Nawa Talab and stated that the accused persons are there. Therefore, this portion of the evidence of this witness that PW-1 & PW-3 came there and informed him belied the evidence of PW-1 & PW-3 that in fact the accused persons were going towards 'Khar' field, they were following them and when

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they were passing near the field of Vinay Singh, they informed him about the murder of his father, by shouting. In para 2 of his evidence Vinay Singh has stated that on hearing about the incident he went to Nawa Talab and saw his father in pool of blood, the accused persons were coming from Nawa Talab, they were crying that they will murder Jawahar Singh and his two sons. Further, in para 5 of his evidence he has stated that when the accused persons were going to the field of Jawahar Singh he reached near Raahar and saw that the accused persons were crying, therefore, he became frightened, sat near Raahar and saw that the accused persons attacked Jawahar Singh, Shailendra Singh and thereafter, Bhupendra Singh. In para 13, he has stated that after the field of Jawahar Singh the field of Bhaskar Singh starts and thereafter, his field. In para 17 he has stated that in his police diary statement Ex.D-3 he disclosed the fact that he hid himself behind the Raahar, why this fact is not written in the police diary statement he does not know. Therefore, this is the improvement made by this witness in his Court evidence.

35. In view of the above contradictions between the evidence of Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3) on the one hand and Vinay Kumar Singh (PW-10) on the other hand, presence of Vinay Singh at the scene of occurrence where the accused persons attacked Jawahar Singh and his two sons, becomes doubtful for the reason that when he started from his field to see the body of his father near Nawa Talab where his father's body was lying, the accused persons were already near the agricultural field of Jawahar Singh, then where was the time for this witness (PW-10) to first go to Nawa Talab to see the body of his father, come back to the agricultural field and see the incident. Therefore, the prosecution has failed to establish presence of Vinay Kumar Singh (PW-10) near the place of incident and that in fact he witnessed the crime in question. Further this witness has stated that he went to see his father on bicycle. But no such bicycle has been produced before the trial Court. This evidence was introduced merely to show that he was able to go only to see his father near Nawa Talab and thereafter returned to the place of incident to become witness of this incident. In his police diary statement Ex.D-3, he has not stated that he had gone to Nawa Talab on bicycle, therefore, this is the improvement in his Court evidence. In the circumstances, no explicit reliance can be placed on his evidence. Hence, the evidence of Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3) remains to establish the crime against the accused persons.

**Santosh Singh, Gopal Das, Chhatram, Balchand, Devilal, Raj Kumar Singh, Dhananjay, Rohit and Nirmal**

36. Now coming to the involvement of the above accused persons in the crime in question, in the first instance, names of Devilal, Balchand, Chhatram & Gopal Das are not mentioned in Dehati Nalishi Ex.P-1. Dehati Nalishi (Ex.P-1) was lodged by Smt. Madhubala Devi (PW-1) to whom all the accused persons were known. She is the eyewitness to the crime in question. She has mentioned names of other accused persons and also the weapons they were carrying, but names of these accused persons have not been mentioned in the Dehati Nalishi Ex.P-1, therefore, this fact creates doubt about the presence of the above four accused persons. Moreover, as has been mentioned above, names of Balchand & Devilal have not been mentioned in the police diary statement of Smt. Madhubala Devi (PW-1). In the Court evidence of Smt. Madhubala Devi (PW-1), she has not attributed any overt act to accused persons Devilal, Balchand, Chhatram, Gopal Das, Santosh Singh, Nirmal, Rohit, Dhananjay & Raj Kumar Singh, whereas about other accused persons she has categorically stated the parts played by each of the accused in the incident and the manner in which they attacked her father and brothers Shailendra Singh & Bhupendra Singh.

37. Similarly, Saraswati Bai (PW-3) has also not mentioned in her Court evidence about the part or overt act of accused persons Devilal, Balchand, Chhatram, Gopal Das, Santosh Singh, Nirmal, Rohit, Dhananjay & Raj Kumar Singh, whereas about other accused persons she has categorically mentioned the overt act played by each of the accused.

38. Only omnibus statements have been made by these two witnesses (PW-1 & PW-3) that other accused persons also attacked, without mentioning any overt act of these persons. Why that has not been mentioned by these two witnesses was not disclosed by them. All the accused persons were well known to these two witnesses being the residents of same village and they themselves saw each accused taking part in the commission of crime. Therefore, looking to the background of animosity between the complainant party and the accused party and that these two witnesses being daughter & wife of deceased Jawahar Singh, sister & mother of deceased persons Shailendra Singh & Bhupendra Singh, these omissions create doubt about the involvement of the above accused persons in the crime in question. Hence, the evidence of these two witnesses about involvement of Devilal, Balchand, Chhatram, Gopal Das, Santosh Singh, Nirmal, Rohit, Dhananjay & Raj Kumar Singh is not worth reliance and does not inspire any confidence. No explicit

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reliance can be placed on the evidence of these two witnesses to the extent of involvement of these accused persons in the crime in question. Possibility of their over, false implication cannot be ruled out particularly in the background of whole facts and circumstances of the case. Therefore, these accused persons are entitled for reasonable benefit of doubt.

**Surjan**

39. As far as involvement of accused Surjan is concerned, these two witnesses (PW-1 & PW-3) have stated that when Saraswati Bai (PW-3) asked her son Bhupendra Singh to run away, Kumar shouted that Bhupendra Singh is running away, on which Surjan attacked Bhupendra Singh with spade. Moreover, Surjan was not with the accused persons, he was working in his field. Specific act has been assigned in the Court's evidence about this accused, but his name has not been mentioned in Dehati Nalishi (Ex.P-1) by Madhubala Devi as also in the statement under Section 161 of the Cr.P.C. of Madhubala Devi. When such a specific act was committed by this accused, moreover he had not come with the accused persons on the site and he was working in his agricultural field, then why his name and act were not mentioned in the Dehati Nalishi (Ex.P-1) as also in the statement under Section 161 of the Cr.P.C. of these two witnesses, create a reasonable doubt about involvement of this accused in the crime in question. Regarding involvement of this accused in the crime in question, improvement has been made by these two witnesses in their Court evidence. Looking to the background of animosity and relationship with the deceased persons, their evidence does not inspire confidence regarding involvement of Surjan in the crime in question.

**Rameshwar**

40. As far as involvement of Rameshwar is concerned, as per the communication dated 5-5-2007 sent by the Superintendent of Police, Janjgir-Champa, Rameshwar Singh had already expired on 14-11-2005 at Village: Bhaismudi, as such, the appeal in respect of accused Rameshwar Singh stands abated.

**Kumar Singh, Baran, Amrit, Guharam, Jaipal, Nande Singh, Resham, Basant & Nand Kumar**

41. As far as involvement of these accused persons in the crime in question is concerned, names of these accused persons have been categorically mentioned in Dehati Nalishi (Ex.P-1) and their names have also been mentioned in the statements of PW-1 & PW-3 recorded under Section 161 of the Cr.P.C. Similarly, in the Court evidence, these two witnesses have

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categorically stated the overt act played by these accused persons in committing the murders of Jawahar Singh, Bhupendra Singh & Shailendra Singh, of course, in their statements under Section 161 of the Cr.P.C. the part attributed by these accused persons has not been specifically described. But conjoint reading of their statements recorded under Section 161 of the Cr.P.C. Exs.D-1 & D-2 describes involvement of these accused persons and in the Court evidence which has been mentioned earlier, specific part played by these accused persons has been narrated by these two witnesses. Learned counsel for the parties were not able to raise genuine ground for not placing reliance on the evidence of Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3) regarding involvement of these nine accused persons.

42. As per the decision of the Apex Court in the matter of **Munshi Prasad** (supra), minor discrepancies between the statement recorded under Section 161 of the Cr.P.C. and the Court evidence cannot be a ground to reject the evidence in its entirety. These two witnesses namely, Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3) have categorically stated about involvement and weapons used by these accused persons. For this we do not find any reason to disagree with the finding arrived by the trial Court regarding involvement of these accused persons in the crime in question.

43. Learned counsel for the appellants argued that there is variance between medical evidence regarding the injuries sustained by the deceased persons and the weapons used by the accused persons. They further argued that as far as Nande Singh is concerned, it has been stated that he attacked deceased Jawahar Singh with Lathi, whereas, all the injuries sustained by Jawahar Singh are incised wounds. Therefore, there is variance between medical and ocular evidence.

44. But we do not find any substance in this argument for the reason that Smt. Madhubala Devi (PW-1) has categorically stated in her evidence that there was an iron part fixed in the Lathi with which accused Nande Singh attacked Jawahar Singh, as such, since the iron part was fixed in the Lathi, it cannot be said that the incised wounds cannot be caused by that Lathi. Accused Amrit was carrying battle axe. As per the report given by the Medical Board of doctors (Ex.P-57) regarding the weapons with which injuries were sustained by the deceased persons, three Lathis were sent for examination to the doctors and the Medical Board of doctors namely, Dr. U.C. Sharma, Dr. A.K. Paliwal & Dr. P.K. Narula examined those Lathis and gave report that injury Nos.8 & 9

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sustained by Bhupendra Singh and injury Nos.5, 11 & 13 sustained by Shailendra Singh could be caused by these Lathis.

45. Of course, all the injuries on the body of Jawahar Singh were incised wounds. It has been categorically stated by Smt. Madhubala Devi (PW-1) that Basant Das attacked Jawahar Singh with rod and Amrit attacked Jawahar Singh with battle axe. Therefore, the accused persons used rod, battle axe & Lathi in commission of murder of three deceased persons. All these accused persons went on the spot after forming an unlawful assembly the common object of which was to commit the murder of Jawahar Singh and his two sons, in furtherance of that common object, each of the accused took part in attacking the deceased persons. Therefore, conviction of these accused persons with the aid of Section 149 of the I.P.C. for committing the murder of Jawahar Singh, Shailendra Singh & Bhupendra Singh is based on legal and clinching evidence available on record.

46. As far as the argument of learned counsel for the appellants regarding non-examination of independent witness is concerned, Smt. Madhubala Devi (PW-1) & Saraswati Bai (PW-3) have stated that the incident took place in the agricultural field and there was no other independent witness, Narayan Yadav (PW-11) had already ran away and he has turned hostile. They have stated that even no villager was coming forward to give evidence. Even when the accused persons were going to the field of Jawahar Singh the nearby vicinity people closed their doors. In the circumstances, it cannot be said that the prosecution has withheld any independent witness who witnessed the crime in question. The manner in which the ghastly attack made by large number of persons, it is impossible for any independent person that he will dare to come forward and depose against the accused persons, secondly place of the incident was the agricultural field of Jawahar Singh, therefore, there was no possibility of seeing the incident by any independent witness.

47. As far as conviction of these accused persons under Section 148 of the I.P.C. is concerned, we are of the considered opinion that these persons were carrying deadly weapons while they were members of unlawful assembly, therefore, they have rightly been convicted under Section 148 of the I.P.C. because they committed riot being armed with deadly weapons at the place of occurrence. In the circumstances, they have rightly been convicted under Section 148 of the I.P.C.

48. No other point was raised and argued.

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49. In the result,

- the appeals filed by accused Raj Kumar Singh, Dhananjay, Rohit, Nirmal, Surjan, Santosh Singh, Gopal Das, Chhatram, Balchand & Devilal succeeds. Conviction and sentences imposed upon them under Sections 302 read with Section 149 and 148 of the I.P.C. are set aside. They are acquitted of the said charges.

  a. Balchand, Devilal, Chhatram & Surjan are on bail. Their bail bonds are discharged and they need not surrender to their bail bonds.

  b. Santosh Singh, Rohit, Gopal Das, Raj Kumar Singh, Nirmal & Dhananjay are in detention since 18-1-1995. They are directed to be released forthwith, if not required in any other case.

- the appeal filed by accused Rameshwar Singh stands abated.

- the appeals filed by accused Kumar Singh, Nande Singh, Nand Kumar, Baran, Jaipal, Resham Lal, Guharam, Amritlal & Basant Das are dismissed. Conviction and sentences imposed upon them under Sections 302 read with Section 149 and 148 of the I.P.C. are maintained. Baran, Jaipal & Resham Lal are on bail. Their bail bonds are discharged and they are directed to surrender before the trial Court forthwith to serve out the remaining sentence.

**Sd/-**
**L.C. Bhadoo**
**Judge**

**Sd/-**
**Sunil Kumar Sinha**
**Judge**

Soma